

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INVITAE CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 21-669 (GBW)
	)	
NATERA, INC.,	)	
	)	
Defendant.	)	

---

INVITAE CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 21-1635 (GBW)
	)	
NATERA, INC.,	)	
	)	
Defendant.	)	

**DEFENDANT NATERA, INC.’S  
MOTION TO EXCLUDE UNDER *DAUBERT* CERTAIN OPINIONS BY MR.  
CLEMONS AND DR. KRANE REGARDING INVITAE’S DAMAGES**

Pursuant to Federal Rule of Evidence 702, Defendant Natera, Inc. respectfully moves this Court for an Order excluding certain opinions of Plaintiff Invitae Corporation’s experts Alexander L. Clemons and Dr. Daniel E. Krane regarding Invitae’s damages. The grounds for this motion are set forth in the Opening Brief filed contemporaneously herewith.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Derek J. Fahnestock*

OF COUNSEL:

Eric Alan Stone  
Daniel J. Klein  
Ariella C. Barel  
Eliza P. Strong  
GROOMBRIDGE, WU, BAUGHMAN &  
STONE LLP  
565 Fifth Avenue, Suite 2900  
New York, NY 10017  
(332) 269-0030

September 29, 2023

---

Karen Jacobs (#2881)  
Brian P. Egan (#6227)  
Derek J. Fahnestock (#4705)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
kjacobs@morrisnichols.com  
began@morrisnichols.com  
dfahnestock@morrisnichols.com

*Attorneys for Defendant Natera, Inc.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INVITAE CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 21-669 (GBW)
	)	
NATERA, INC.,	)	
	)	
Defendant.	)	

---

INVITAE CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 21-1635 (GBW)
	)	
NATERA, INC.,	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER GRANTING DEFENDANT NATERA, INC.’S  
MOTION TO EXCLUDE UNDER *DAUBERT* CERTAIN OPINIONS BY  
MR. CLEMONS AND DR. KRANE REGARDING INVITAE’S DAMAGES**

At Wilmington this \_\_\_\_ day of \_\_\_\_\_, 2023, having considered Defendant Natera, Inc.’s Motion to Exclude Under *Daubert* Certain Opinions by Mr. Clemons and Dr. Krane Regarding Invitae’s Damages, and all papers filed in connection therewith:

IT IS HEREBY ORDERED that the Motion is GRANTED and the following opinions are excluded:

1. Mr. Clemons’s opinions that Invitae would have captured 50-100% of Natera’s sales in a “but for world.” *See, e.g.*, Clemons Opening Rpt. (Ex. 23) at 37-39, Fig. 11, Fig. 13; Clemons Dep. Tr. (Ex. 24) at 47:9-20.

2. Dr. Krane's opinions that Natera does not have any non-infringing alternatives because Natera has not established that those alternatives are non-infringing, and any opinions by Mr. Clemons relying on such testimony. *See, e.g.*, Krane Op. Rpt. (Ex. 5) at ¶¶ 311-13; Clemons Opening Rpt. (Ex. 23) at 32, 74, 86-89, 94.
3. Dr. Krane's opinions that Natera does not have any non-infringing alternatives available to it because Natera has not implemented such alternatives, and any opinions by Mr. Clemons relying on such testimony. *See, e.g.*, Krane Dep. Tr. (Ex. 6) at 276:3-25; *see also* Krane Dep. Tr. (Ex. 6) at 279:5-280:8, 284:3-285:2; Krane Op. Rpt. (Ex. 5) at ¶¶ 311-13.
4. Dr. Krane's opinions that Dr. Metzker's conversation with Drs. Salari and Wu was "not credible," and any opinions by Mr. Clemons relying on such testimony. *See, e.g.*, Krane Reply Rpt. (Ex. 27) at ¶ 32; Clemons Opening Rpt. (Ex. 23) at 32, 74, 86-89, 94.
5. Dr. Krane's opinions that the patents of the BD/ArcherDX License are not technically comparable to the Asserted Patents, and any opinions by Mr. Clemons relying on such testimony. *See, e.g.*, Clemons Op. Rpt. (Ex. 23) at 48-58, 61-73, 75-77, 93, 96-98; Krane Op. Rpt. (Ex. 5) at ¶¶ 314-19.

---

Hon. Gregory B. Williams  
United States District Judge

**RULE 7.1.1 CERTIFICATE**

I hereby certify that counsel for Defendant has raised the subject of the foregoing motion with counsel for Plaintiff, and the parties have not been able to reach agreement on the issues raised in the motion.

*/s/ Derek J. Fahnestock*

---

Derek J. Fahnestock (#4705)

**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on September 29, 2023, upon the following in the manner indicated:

Brian E. Farnan, Esquire  
Michael J. Farnan, Esquire  
FARNAN LLP  
919 North Market Street, 12th Floor  
Wilmington, DE 19801  
*Attorneys for Plaintiff*

*VIA ELECTRONIC MAIL*

Edward R. Reines, Esquire  
Derek C. Walter, Esquire  
WEIL, GOTSHAL & MANGES LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065  
*Attorneys for Plaintiff*

*VIA ELECTRONIC MAIL*

Yi Zhang, Esquire  
Barry Zhang, Esquire  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153-0119  
*Attorneys for Plaintiff*

*VIA ELECTRONIC MAIL*

*/s/ Derek J. Fahnestock*

---

Derek J. Fahnestock (#4705)